IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.130 OF 2002

Su-Raj Diamonds (India) Limited
and its Associates and/or
Contract Staff Association. ...Petitioner.

Vs.

Su-Raj Diamonds (India) Ltd.. ...Respondent.

.....

Mrs.Meena Doshi for the Petitioner.

Mr.J.P.Cama, Senior Advocate with Mr. S.K.Talsania i/b.Khaitan Jayakar for Respondent Nos.1 to 9 & 21,

Ms.Naina Dhutia i/b. Nameet & Co. for Respondent No.10 to 13.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

April 28, 2005.

P.C. :

The Industrial Court by its order dated 5th September 2001 has dismissed a complaint of unfair labour practice (Complaint (ULP) 1411 of 1999)

under Item 9 of Schedule IV to the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. At the hearing of the present petition, it has, inter alia, been urged that the Industrial Court has failed to consider the material evidence that would be relevant for determining as to whether the provisions of Chapter V-B of the Industrial Disputes Act, 1947, have been attracted. Section 25(k)(1) provides that Chapter V-B shall apply to an industrial establishment, not being an establishment of a seasonal character or in which work is performed only intermittently in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. During the course of the hearing, Counsel appearing on behalf of the Petitioner and Counsel for Respondent Nos.1 to 9, 10 to 13 and 21 have agreed that the following order may be passed by consent and without any further reasons being recorded:

(1) The impugned order of the Industrial Court dated 5th September 2001 is quashed and set aside and Complaint (ULP) 1411 of 1999 is restored to the file of the Industrial Court for a decision afresh upon hearing the parties;

(2) All the rights and contentions of the parties are kept open to be urged before the Industrial Court;

(3) The parties would be at liberty to adduce additional evidence that would be relevant to the question as to the number of workmen that were employed by the First Respondent on an average per working day in the twelve months immediately preceding the date of closure (16th November 1999). The First Respondent has agreed before the Court that it shall produce before the Industrial Court all the relevant Provident Fund records, muster rolls both for Sections I and II and the original letters of resignation upon which reliance is sought to be placed by the First Respondent. This shall, however, not preclude the Petitioner from moving an appropriate application for discovery and inspection of further record as may be required in order to enable the Industrial Court to decide upon the applicability of the provisions of Chapter V-B of the Industrial Disputes Act, 1947.

(4) Since no other point has been pressed before the Court, the Petition shall accordingly stand disposed of. The Industrial Court is requested to expedite the disposal of the complaint upon remand

and to endeavour to do so by the end of 2005.

.....